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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/710,153	06/22/2004	Franz Ehrenleitner	OST-041220	4152
22876	7590	10/19/2005	EXAMINER	
FACTOR & LAKE, LTD 1327 W. WASHINGTON BLVD. SUITE 5G/H CHICAGO, IL 60607			MARCELO, EMMANUEL MONSAYAC	
			ART UNIT	PAPER NUMBER
			3654	

DATE MAILED: 10/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>		<b>Applicant(s)</b>	
	10/710,153		EHRENLEITNER, FRANZ	
	<b>Examiner</b>		<b>Art Unit</b>	
	Emmanuel M Marcelo		3654	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 and 11 is/are rejected.
- 7) ☒ Claim(s) 5-8 and 10 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 04 October 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |                                                                                                    |                                                                             |
|----------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. ____.                                                |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>10-4-04</u> .                                                             | 6) <input type="checkbox"/> Other: ____.                                    |

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*Ch*

## DETAILED ACTION

### *Claim Rejections - 35 USC § 112*

Claims 2-8 and 11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

With respect to claim 2, line 2, the recitation “the lower ends” lacks positive antecedent basis in the claims. On line 6, “(lying” should be ---lying---. On lines 2-3, “a holding device” is set forth. However, the same recitation is set forth in claim 1, line 8. Setting forth the same element again amounts to a double inclusion.

With respect to claim 3, lines 2, it is suggested ---the at least two--- be inserted before “bands” and ---at least two--- be inserted before bands (in line 5) for consistency.

With respect to claim 5, line 4, the recitation “the outer bands” lacks positive antecedent basis in the claims. On line 6, “the middle band” lacks positive antecedent basis in the claims.

With respect to claim 7, lines 4 and 5, respectively, “the first pair” and “the second pair” lack positive antecedent basis in the claims.

With respect to claim 10, line 4, “the step” lacks positive antecedent basis in the claims.

A broad range or limitation together with a narrow range or limitation that falls within the broad range or limitation (in the same claim) is considered indefinite, since the resulting claim does not clearly set forth the metes and bounds of the patent protection desired. See MPEP § 2173.05(c). Note the explanation given by the Board of Patent Appeals and Interferences in *Ex parte Wu*, 10 USPQ2d 2031, 2033 (Bd. Pat. App. & Inter. 1989), as to where broad language is

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followed by "such as" and then narrow language. The Board stated that this can render a claim indefinite by raising a question or doubt as to whether the feature introduced by such language is (a) merely exemplary of the remainder of the claim, and therefore not required, or (b) a required feature of the claims. Note also, for example, the decisions of *Ex parte Steigewald*, 131 USPQ 74 (Bd. App. 1961); *Ex parte Hall*, 83 USPQ 38 (Bd. App. 1948); and *Ex parte Hasche*, 86 USPQ 481 (Bd. App. 1949). In the present instance, claim 11 recites the broad recitation "metal", and the claim also recites "in particular of steel" which is the narrower statement of the range/limitation.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent no. 586,350 to Avery.

With respect to claims 1 and 2, Avery discloses a lifting drum; a drive (weight of load); at least two bands (E, F) secured to the drum at one end and at the other end carry a holding device (G); the bands are wound in such a way that one turn lies above the other (see Fig. 3).

With respect to claims 3 and 4, the holding device comprises a rocker element (G) connecting the lower ends of the at least two bands to one another, and in that the rocker element has, between the points at which the force is introduced by the bands, a fastening device (I) for

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the load, the lower ends of the bands are secured in clamping devices at opposite ends of the rocker element (G).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 9 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Avery.

Avery does not disclose a coating on at least one side of the bands. It well known in the art to coat line for purposes of insulation and wear protection. Thus, it would have been obvious to one of ordinary skill in the art to provide a coat on the lines of Avery to increase wear protection of lines E and F.

Avery does not disclose metal bands. The use of metal or steel lines is old and well known in the art. It would have been obvious to one of ordinary skill in the art to provide Avery with steel bands so that the load capacity of the lines can be increased.

***Allowable Subject Matter***

Claims 5-8 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

The prior art fails to teach or fairly suggest the use of three bands (claim 5) or the use of four bands (claim 7).

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Claim 10 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The prior art fails to teach or fairly suggest a spacer element as required by claim 10.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

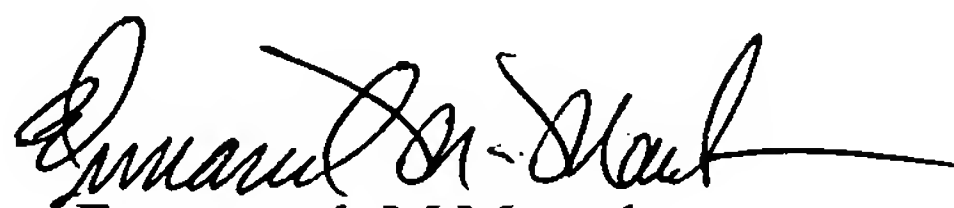
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Emmanuel M Marcelo whose telephone number is 571-272-6949.

The examiner can normally be reached on Monday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Katherine Matecki can be reached on 571-272-6951. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Emmanuel M Marcelo

Primary Examiner

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emm

October 12, 2005